The principal case raises a novel question as to the property which may be the subject of larceny. At common law, a chose in action was not the subject of larceny. But by the Wisconsin statutes, larceny is defined so as to include the stealing of another's property, "if the value thereof shall exceed $100." St. 1898, § 4415. There is no doubt, therefore, that if the town orders had been valid, they would have been the subject of larceny. But as they were fraudulently issued, they were null and void and created no obligation against the city, no matter into whose hands they might fall. *Hubbard* v. *Lyndon,* 28 Wis. 674. Does the void character of the town orders therefore so deprive them of value that they can not be the subject of larceny? The majority opinion answers the question in the negative and reliance is placed mainly upon *State* v. *White,* 66 Wis. 343, 28 N. W. 202. In that case, the unissued bonds of a city were held to be the subject of larceny. But the city would have been held liable on such bonds in the hands of a bona fide holder—at least in some courts. The court, however, said that the bonds were the subject of larceny, even though the city would not have been liable upon them. See also, *Commonwealth* v. *Rand,* 7 Metc. (Mass.) 475, 41 Am. Dec. 455; *Bork* v. *People,* 91 N. Y. 5. But, in these cases, the obligations were valid and enforceable in the hands of a bona fide holder. A county warrant obtained by fraud and void is the subject of larceny. *State* v. *Morgan,* 109 Tenn. 157, 69 S. W. 970. Notes to be the subject of larceny must be genuine and valid. *Wilson* v. *State,* 1 Port. (Ala.) 118; *State* v. *Smart,* 4 Rich. L. (S. Car.) 356; *Starkey* v. *State,* 6 Oh. St. 267. It has also been held that the value of an article as a statutory subject of larceny is its market value. 12 A. & E. ENCY. OF LAW, 1st ed., p. 786 n; *Filson* v. *Territory,* 11 Okla. 351, 67 Pac. 473; *State* v. *Smith,* 48 Ia. 595; *State* v. *James,* 58 N. H. 67. But actual value may be taken as a standard when the article has no market value. *State* v. *Maggard,* 160 Mo. 469, 61 S. W. 184.

MANDAMUS—DISCRETION OF OFFICER—ARBITRARY EXERCISE.—Under the so-called Racing Law of New York, making it necessary for a corporation wishing to conduct running or steeplechase meets to secure a license, the State Racing Commission "may grant" the license "if, in the judgment of such commission," a proper case is shown (Laws 1895, C. 570, Sec. 6). *Held* (O'BRIEN, E. T. BARTLETT and HISCOCK, JJ., dissenting), that although the power given the commissioners was discretionary, that nevertheless a refusal to grant the relator a license because its track would interfere with racing dates on other tracks, was arbitrary and that the issuance of the license could be compelled by mandamus. *People ex rel. Empire City Trotting Club* v. *State Racing Commission et al.* (1907), — N. Y. —, 82 N. E. Rep. 723.

The question is squarely presented, that granting a discretionary power has been given an administrative officer, and he has acted erroneously, can the error be corrected by mandamus? The answer in theory and by weight of authority is clearly that mandamus will not lie, since to permit it to do so would be in effect substituting the discretion of the court for the discretion of the officer. HIGH EX. LEG. REM. 24, 34, 156; 26 CYC. 160. *City of Louisville* v. *Kean,* 57 Ky. 9; *State* v. *Hastings,* 10 Wis. 518; *State* v. *Young,* 84 Mo. 90;

State v. *Crites,* 48 Ohio 460; *Shotwell* v. *Covington,* 69 Miss. 735. In the last case cited the court said: "Holding as we must that it is settled that the power is * * * judicial (as distinguished from ministerial), we are unable to perceive upon what principle we can decide that an arbitrary, or even corrupt, abuse of the power can be corrected by mandamus." Dicta tending to show that the court will interfere if the abuse is palpable are found in *People* v. *Van Cleave,* 183 Ill. 330; *People* v. *Williams,* 185 N. Y. 92, and in *People* v. *Department of Health,* 82 N. E. Rep. 187 (N. Y.). In the first case supra the court declared the act ministerial, the second involved certiorari, and in the third peremptory mandamus was refused because the act was discretionary, though the court intimated that an alternative writ would have lain. In *Sanson* v. *Mercer,* 68 Texas 488, the act was declared ministerial. *Board of Dental Examiners* v. *People,* 123 Ill. 227, is, however, on all fours with the principal case, following the dicta of *People* v. *Van Cleave,* supra. While the case may therefore mark a tendency to supervise the discretion of administrative officers, it is at present doubtful authority, a conclusion strengthened by the fact that three judges dissent.

MARRIAGE—VALIDITY—DISAPPEARANCE OF FIRST HUSBAND.—Contestant's husband had disappeared, and after the statutory period of five years had elapsed, she married decedent. The statute provided that after a period of five years, the survivor might marry again and the marriage would not necessarily be void. In a proceeding to probate decedent's will which was made prior to his marriage with contestant, *held,* that where a husband disappeared and was absent for five years, and his wife had reason to believe that he was dead, her second marriage in good faith was valid as to all the world, unless the first husband reappears and institutes an action to annul the same. *In re Del Genovese's Will* (1907), 107 N. Y. Supp. 1033.

The decision in the principal case follows the New York decisions as found in *Cropsey* v. *McKinney,* 30 Barb. 47; *White* v. *Lowe,* 1 Redf. Sur. 376; *Jones* v. *Zoller,* 29 Hun 551; *Gall* v. *Gall,* 114 N. Y. 109, 21 N. E. 106. In these cases the court held that marriages of this nature are valid until nullified by the decree of a competent tribunal. However, *Spicer* v. *Spicer,* 16 Abb. Prac. (N. S.) 112, held that a woman whose husband absents himself for the space of five years, without being known to her to be living during that time is incapable of contracting marriage, notwithstanding the statute. The principal case decided that *Spicer* v. *Spicer,* supra, was contrary to the meaning of the statute. Similar holdings to those of the New York courts are found in *Estate of Harrington,* 140 Cal. 244, 73 Pac. 1000, 98 Am. St. Rep. 51; *Charles* v. *Charles,* 41 Minn. 201. A few courts seem to have gone even further and have pronounced the marriage valid, nothing being said about the right of the first husband or wife to annul the subsequent marriage. See *Strode* v. *Strode,* 66 (3 Bush) Ky. 227, 96 Am. Dec. 211; *Inhabitants of Hiram* v. *Pierce,* 45 Me. 367, 71 Am. Dec. 555; *Woods* v. *Woods' Adm'rs,* 2 Bay (S. C.) 476. The old common law rule that marriages of this nature are void is still applied in some of the states. This common law rule is well expressed in the opinion in *Martin's Heirs* v. *Martin,* 22 Ala. 86, in these